

Appl. No. 10/730,438
Atty. Docket No. CM2713Q
Amdt. dated June 22, 2006
Rcply to Office Action of March 31, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1- 9 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102 Over McCormack

Claims 1-4 and 6 have been rejected under 35 U.S.C. § 102(b) as being anticipated by WO Publication No. 00/38915 filed on behalf of McCormack et al., hereafter, "McCormack". Applicants respectfully traverse the rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). McCormack does not teach all of the claim elements of claims 1-4 and 6.

McCormack teaches breathable microporous films comprising multiple film layers. (page 4, lines 11-12). Additionally, McCormack teaches that the microporous films may be laminated to an additional layer or sheet which may include a nonwoven. (page 9, lines 31-35). McCormack further teaches that coloring agents may be added to the film to create microporous films having a variety of colors. (page 6, lines 33-35). "[P]igments are desirably added by pre-compounding the pigment with the desired resin to form a resin concentrate with a relatively high percent of pigment and then blending a selected amount of the resin concentrate with unpigmented resin during processing to form a matrix having the desired pigmentation levels." (page 7, lines 3-7). Also, McCormack teaches that embossed regions 40 can color-contrast with the non-embossed regions of the laminate 30 to create a laminate with a colored pattern therein." (page 12, lines 12-14). Additionally, McCormack, in its examples teaches that the laminates exhibit aesthetically pleasing, "print-like" patterns. (See page 19, lines 1-2; lines 9-11; lines 18-20; and page 20, lines 5-7). However, McCormack does not mention that the films or the nonwoven may comprise a design which is provided by printing pigmented ink onto the film or the nonwoven.

In contrast, claim 1, recites, in part, that "at least one of said polymeric film or said nonwoven web has visual discernable ornamental designs, said designs being provided by printing a pigmented ink onto at least one of said major surfaces of at least

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one of said polymeric film or said nonwoven web.” As such, Applicants assert that McCormack does not teach all of the claim elements of claim 1. Consequently, Applicants assert that claim 1 is not anticipated by McCormack.

Because McCormack does not teach all of the claim elements of claim 1 and because claims 2-4 and 6 depend from claim 1, Applicants assert that McCormack similarly does not teach all of the claim elements of dependent claims 2-4 and 6. Consequently, Applicants assert that claims 2-4 and 6 are not anticipated by McCormack.

Rejection Under 35 USC §103(a) Over McCormack in view of Tao et al.

Claim 5 has been rejected under 35 U.S.C. §103(a) as being unpatentable over McCormack in view of WO Publication No. 99/32164 filed on behalf of Tao et al., hereafter, “Tao”. Applicants respectfully traverse the rejection by the Office.

In order to establish a prima facie case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* The suggested combination fails to teach or suggest all of the claim elements of claim 1.

In its rejection, the Office states:

One would be motivated to modify the ornamental design of McCormack with the graphic coverage area of Tao for improved article aesthetics since both references disclose disposable wearing articles having multi-layered laminate back sheets with visually perceptible designs. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the design thus providing the aforementioned coverage percentage.

(Office Action page 4).

As stated previously, the patterns of McCormack can be created when the embossed regions color contrast with the non-embossed regions. As such, the alleged graphic coverage area of Tao in combination with the patterns of McCormack does not teach “at least one of said polymeric film or said nonwoven web has visual discernable

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ornamental designs, said designs being provided by printing a pigmented ink onto at least one of said major surfaces of at least one of said polymeric film or said nonwoven web", as is recited, in part, in claim 1.

Because the suggested combination fails to teach or suggest all of the claim elements of claim 1, Applicants assert that a prima facie case of obviousness has not been established with regard to claim 1. Additionally, because claim 5 depends from claim 1, Applicants assert that the suggested combination similarly fails to teach or suggest all of the claim elements of dependent claim 5. As such, Applicants assert that a prima facie case of obviousness has not been established against claim 5.

Rejection Under 35 USC §103(a) Over McCormack

Claim 7 has been rejected under 35 U.S.C. §103(a) as being unpatentable over McCormack. Applicants respectfully traverse the rejection by the Office.

In its rejection, the Office states:

The distance between rear waist edge and absorbent core end edge is a result effective variable since it is a result of the diaper overall dimensions and absorbent core dimensions. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify McCormack with the distance between rear waist edge and absorbent core end edge value, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch and Slaney, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

(Office Action page 4).

In light of the arguments presented above with regard to claim 1, Applicants assert that the Office's rejection of claim 7 is inapposite. As stated previously, McCormack fails to teach or suggest "at least one of said polymeric film or said nonwoven web has visual discernable ornamental designs, said designs being provided by printing a pigmented ink onto at least one of said major surfaces of at least one of said polymeric film or said nonwoven web", as is recited, in part, in claim 1.

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Because claim 7 depends from claim 1, Applicants assert that McCormack fails to teach or suggest all of the claim elements of claim 7. Consequently, Applicants assert that a prima facie case of obviousness has not been established against claim 7.

Rejection Under 35 USC §103(a) Over McCormack in view of Schleinz et al.

Claims 8-9 have been rejected under 35 U.S.C. §103(a) as being unpatentable over McCormack in view of U.S. Patent No. 5,612,118, issued to Schleinz et al., hereafter, "Schleinz". Applicants respectfully traverse the rejection by the Office.

In its rejection, the Office states:

One would be motivated to modify the printed graphics of McCormack with the half-toning printing process of Schleinz for improved graphic image quality since both references disclose disposable absorbent wearing articles with back sheets having printed graphics thereon. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the printed graphics and thus provide half-toning process printed graphics.

(Office Action, page 5).

As established with regard to claim 5, McCormack does not teach or suggest "at least one of said polymeric film or said nonwoven web has visual discernable ornamental designs, said designs being provided by printing a pigmented ink onto at least one of said major surfaces of at least one of said polymeric film or said nonwoven web", as is recited, in part, in claim 1. Instead, McCormack teaches that patterns can be created by the color contrast between the embossed and non-embossed regions of the multilayer film. As such, the suggested modification of McCormack with the teachings of Schleinz, would still not teach all of the claim elements of claim 1.

Because the suggested modification of McCormack with the teachings of Schleinz does not teach all of the claim elements of claim 1 and because claims 8-9 depend from claim 1, Applicants assert that the suggested combination of McCormack and Schleinz does not teach all of the claim elements of claims 8 and 9. Consequently, Applicants assert that a prima facie case of obviousness has not been established against claims 8 and 9.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 102(b) and § 103(a). Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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Date: June 22, 2006
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